

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

UNITED STATES OF AMERICA)	
)	
v.)	NO. 3:04-CR-179
)	
GREGORY ALEC PHILLIPS)	

MOTION *IN LIMINE* REGARDING TESTIMONIAL HEARSAY

Comes the accused, Gregory Alec Phillips, by and through counsel, and moves this Honorable Court for an Order Granting his Motion *In Limine* Regarding Testimonial Hearsay. In support of which the accused would show as follows:

1. That Gregory Alec Phillips was indicted in the United States District Court, Eastern District of Tennessee on December 7, 2004. The Grand Jury for the United States District Court, Eastern District of Tennessee returned a true bill wherein it was alleged that Gregory Alec Phillips did travel in foreign commerce to Thailand and did knowingly engage in illicit sexual conduct as defined in Title 18 U.S.C. §§ 2423(f) and 2246, with a minor male person herein named John Doe.
2. The United States Supreme Court in Crawford v. Washington, 124 S.Ct. 1354 (2004), redefined the Confrontation Clause by holding that out-of-court statements that are testimonial in nature are inadmissible.
3. That based upon the discovery provided by the United States, there are a number of material issues wherein testimonial hearsay will be material to a detention hearing, evidentiary hearing and trial. These issues include but are not limited to:

- a. Statements given by the minor child, Presert Ketbuakaew (a.k.a. Ong) to agents of the Office of Homeland Security and Royal Thai Police;
 - b. Statements given by the minor child, Presert Ketbuakaew (a.k.a. Ong) to medical personnel;
 - c. Information provided to the Office of Homeland Security by confidential informants and/or “tipsters”;
 - d. Investigative files, notes, memorandum and electronic communiqué and other testimonial statements made by the Royal Thai Police, the Office of Homeland Security and other child welfare agencies of Thailand;
 - e. Statements given by agents of the Office of Homeland Security and Royal Thai Police regarding the execution of the Thai Search Warrant at the residence of Gregory Alec Phillips.
4. That recently, the Sixth Circuit has held that statements of a confidential informant to police are “testimonial” in nature. United States v. Cromer, 389 F.3d 662, 2004 WL 2711130 (6th Cir.(Mich.)), 2004 Fed.App. 0412P.
 5. In Cromer, the Sixth Circuit reasoned that in order to determine whether a statement would constitute testimonial hearsay and thus, violate the Confrontation Clause; that “the proper inquiry, then, is whether the declarant tends to bear testimony against the accused. That intent, in turn, may be determined by querying whether a reasonable person in the declarant’s position would anticipate his statement being used against the

accused in investigating and prosecuting the crime.” U.S. v. Cromer, Id. at 9.

6. That when the Cromer test regarding testimonial hearsay is applied to the instant facts it requires the exclusion of the above categories of testimonial hearsay in the prosecution of Gregory Alec Phillips including, but not limited to, evidentiary motions, hearings and trial.

WHEREFORE, Gregory Alec Phillips moves the Honorable Court for an Order Granting his Motion *In Limine* Regarding Testimonial Hearsay.

RESPECTFULLY SUBMITTED THIS 26 January 2005.

s/ Gregory P. Isaacs
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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing pleading has been served on counsel set forth below, pursuant to the Fed. R. Crim. P., by electronic delivery, hand-delivery or by placing a true and correct copy of same in the United States Mail with sufficient postage to carry the same to its destination.

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DATED this 26 January 2005.

s/ Gregory P. Isaacs
GREGORY P. ISAACS